In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 9, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA & FLORIDA

JOINT MOTION OF THE UNITED STATES AND THE STATE OF FLORIDA TO INITIATE SUPPLEMENTAL PROCEEDINGS; TO CONSOLIDATE PROCEEDINGS; TO APPOINT A SPECIAL MASTER; AND FOR ENTRY OF A SUPPLEMENTAL DECREE

The United States of America, by its Solicitor General, and the State of Florida, by its Attorney General, jointly move the Court to initiate supplemental proceedings to define with greater particularity the boundary between the area of the submerged lands of the Gulf of Mexico in which the State of Florida has rights to the natural resources and the area of the submerged lands of the Gulf of Mexico in which the United States has such rights; to consolidate those proceedings with proceedings under *United States* v. *Maine, et al.*, No. 35, Original, to define the boundary between the area of the submerged lands of the

418-762—71

Atlantic Ocean in which the State of Florida has rights to the natural resources and the area of the submerged lands of the Atlantic Ocean in which the United States has such rights; to appoint a Master to hold hearings and make recommendations for a decree; and for entry of a decree defining the foregoing boundaries.

This motion is made on the following grounds:

1. The parties agree that in *United States* v. *Florida,* 363 U.S. 121, this Court determined at least (1) that Congress had approved the historic boundary of Florida described in its 1868 Constitution, and (2) that Florida is entitled to the natural resources of the submerged lands in the Gulf of Mexico not exceeding three marine leagues from the coastline of Florida within those historic boundaries.

2. The parties disagree as to the following points, all but the first two of which affect Florida's rights in both the Atlantic Ocean and the Gulf of Mexico:

A. The location of the coastline of Florida in the Gulf of Mexico.

B. Whether, in *United States* v. *Florida,* this Court determined Florida's rights in the submerged lands off of its Atlantic coast.

C. The location of the historic boundary of Florida under its 1868 Constitution.

D. The location of the line separating the Gulf of Mexico from the Atlantic Ocean.

E. The present effect of the Congressional approval of the 1868 Florida Constitution.

F. Whether Florida's rights are limited by the Submerged Lands Act.

3. By paragraph 8 of the Final Decree of December 12, 1960, this Court reserved jurisdiction in this case "to entertain such further proceedings, enter such orders and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to this decree."

4. The question of the extent of Florida's submerged lands in the Atlantic Ocean was raised by the Amended Complaint in this case, but in the view of the United States, it was not considered by the Court in its opinion of May 31, 1960.

5. Simultaneously herewith is submitted a joint motion of the United States and the State of Florida in No. 35, Original, to consolidate proceedings therein against the State of Florida with proceedings against the State of Florida in this cause.

6. The Special Master appointed in the case of *United States* v. *Maine, et al.,* No. 35, Original, after hearing on the Motion for Severance of the State of Florida referred to him by this Court on November 16, 1970, has advised the parties that he is submitting a report recommending that the proceedings against Florida in No. 35, Original, be severed from that cause and be consolidated for all purposes with *United States* v. *Louisiana, et al.,* No. 9, Original, on the condition that in No. 9, Original, the State of Florida in these proceedings will not present any evidence or make any argument with respect to the rights of British Colonies under colonial grants or charters, or with respect to any claim that States of the Union have purely constitutional rights of a proprietary character in the submerged lands or natural resources of the bed of

the sea adjacent to their coasts, but the State of Florida shall be entitled in No. 9, Original, to the benefits of any determination that the Court may make in No. 35, Original, with respect to those questions to the extent that such determination may be relevant under the equal footing doctrine or otherwise applicable to the factual situation of the State of Florida.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General of
the United States.

ROBERT L. SHEVIN,
Attorney General of
the State of Florida.

Dated this day of March, 1971.

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 9, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA & FLORIDA

MEMORANDUM IN SUPPORT OF MOTION

The purpose of this joint motion is to initiate proceedings to define with greater particularity the submerged lands of the Gulf of Mexico over which the State of Florida is entitled to exercise rights, to consolidate with those proceedings, proceedings against the State of Florida in No. 35, Original, to determine Florida's claims to the submerged lands in the Atlantic; to appoint a master to conduct hearings and make recommendations for a decree describing the submerged lands in both the Gulf and the Atlantic over which Florida has rights; and for entry of such a decree.

In its decision in *United States* v. *Florida,* 363 U.S. 121, the court determined that the State of Florida was entitled to exercise rights over the submerged lands within its historic boundaries in the Gulf of Mexico not exceeding three marine leagues from its coast. In paragraph 8 of the Final Decree entered in this case on December 12, 1960, 364 U.S. 502, the Court specifically retained jurisdiction to define those submerged lands with greater particularity. Circumstances have arisen making it necessary for the parties to move now to institute such supplemental proceedings in this case.[1]

[1] In *United States* v. *Florida,* N.D. Fla., Tallahassee Civ. No. 1672, a question has arisen as to Florida's rights in the Gulf of Mexico, which will be controlled by the supplemental decision now sought herein. In that action, the United States seeks to permanently enjoin Florida from interfering with fishing by foreign vessels in waters of the Gulf of Mexico more than three geographical miles from the shore of Florida in an area known as Florida Bay which Florida claims as territorial waters but which the United States recognizes as high seas. Rather than proceed to an independent determination of a question that is also pending before this Court under its retained jurisdiction in the present case, the district court by order of February 5, 1971, directed the United States to move herein, no later than April 5, 1971, to invoke the Court's reserved jurisdiction to seek a determination of the issue.

In addition, we are advised by the Department of the Interior that the sum of $3,094,272.00 derived from leasing of submerged lands off the coast of Florida is being held in a suspense account because some of the lands are claimed by Florida. A determination of the respective rights of the United States and Florida is necessary before proper distribution of that fund can be made.

At the same time, proceedings are under way in *United States* v. *Maine, et al.*, No. 35, Original, to determine Florida's claims to the submerged lands in the Atlantic Ocean. The same issue had been raised in the Amended Complaint in this case, but the United States understanding has been that in its opinion of May 31, 1960, and its decree of December 12, 1960, the Court dealt with Florida's claims only in the Gulf of Mexico. Recognizing that the issue of the extent of Florida's rights in the submerged lands off of its Atlantic coast was thus still before the Court pursuant to its retained jurisdiction in this case, the United States nevertheless included Florida as a defendant in No. 35, Original, as to its claim in the Atlantic. This was done in the belief that the issues affecting the rights of Florida on its Atlantic coast are so similar to those affecting the rights of the other Atlantic States as to make it desirable that all be considered together. Florida filed a motion for severance in No. 35, Original, which the Court, by order of November 16, 1970, submitted to the Special Master appointed in that case. After considering the motion, the Special Master has advised the parties that he has concluded that Florida's claims in the Atlantic are not the same as those of the other defendant States, and that he is submitting a recommendation to the Court that the proceedings against Florida in No. 35, Original, be severed from that cause and consolidated for all purposes with proceedings against Florida in this case.

As there are common questions of law and fact presented, both parties believe that it will be more orderly and convenient to have Florida's claims to the submerged lands in the Gulf of Mexico and in the Atlantic Ocean determined in a single proceeding before a single master. A joint motion for that purpose is being filed simultaneously herewith in No. 35, Original. This motion is designed to accomplish that purpose in this case.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General of the United States.

ROBERT L. SHEVIN,
Attorney General of the State of Florida.

MARCH 1971.

U. S. GOVERNMENT PRINTING OFFICE: 1971